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TO RUEHC/SECSTATE WASHDC IMMEDIATE 5074  
INFO RUCNDT/USMISSION USUN NEW YORK PRIORITY 0209

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SENSITIVE  
SIPDIS

DEPT FOR IO/MPR (B.HACKETT) AND EUR/AGS (Y.SAINT-ANDRE)

E.O. 12958: N/A  
TAGS: [AORC](#) [UNGA](#) [PREL](#) [UNGA](#) [UNGA](#) [SZ](#)  
SUBJECT: UN SYSTEM OF INTERNAL JUSTICE

REF: STATE 51372

11. (U) Contains Action Request; please see para 3.

12. (SBU) Poloff emphasized the message in reftel in a May 21 meeting with MFA Deputy UN Affairs Coordinator Frank Gruetter and MFA Deputy Legal Advisor for Development of International Law Joerg Lindenmann. Gruetter, who recently returned from the Swiss Mission to the UN in New York, carefully considered the arguments in the reftel non-paper, but noted that he could only provide preliminary feedback. He responded that Switzerland also is concerned about the potential scope and costs of the proposed reforms. He said the GOS therefore will seek to balance this concern with its objective of opening up more opportunities for other categories of personnel "to be heard," to ensure that the UN has "an internal justice system worthy of the name." Both Gruetter and Lindenmann acknowledged that reaching agreement on UN internal justice system reforms by January 1, 2009 was unlikely. Gruetter suggested that it would nevertheless be useful on that date to be able to point to an ongoing discussion process that is working toward resolution of the internal justice issue.

13. (SBU) Gruetter said that the GOS is more open to allowing the UN Appeals Tribunal (UNAT) to develop new facts, especially if it is clear that the UN Dispute Tribunal (UNDT) has acted arbitrarily. Lindenmann said that, in his reading of the USG's non-paper, it was not clear how the UNAT would develop new facts "on the basis of the written record developed by the lower court," in cases in which the UNDT judge's factual findings "are clearly erroneous." Action Request: Post would appreciate guidance to assist us in clarifying this point for the Swiss MFA.

14. (SBU) Gruetter said that the GOS is more open to allowing the UNDT judges the discretion to refer difficult cases to a panel of three UNDT judges. He commented that the GOS sees some linkage between this issue and the ultimate scope of the role of the UNAT in reviewing cases.  
CONEWAY